

**Before the
Federal Communications Commission
Washington, D. C. 20554**

FCC 09M-52

In the Matter of)	EB Docket No. 07-197
)	
Kurtis J. Kintzel, Keanan Kintzel, and)	File No. EB-06-IH-5037
all Entities by which they do business)	FRN: 0007179054
before the Federal Communications)	
Commission)	
)	
Resellers of Telecommunications Services)	NAL/Acct. No. 200732080029
)	
)	

ORDER

Issued: August 6, 2009

Released: August 6, 2009

The Enforcement Bureau (“Bureau”), Kurtis J. Kintzel, Keanan Kintzel, and all Entities by which they do business before the Federal Communications Commission (“Defendants” and collectively, the “Parties”) have jointly requested the Presiding Judge to accept their Settlement Agreement fully executed on July 29, 2009, and issue an order adopting the Settlement Agreement and terminating this proceeding.

On September 10, 2007, the Commission released an Order to Show Cause and Notice of Opportunity for Hearing in this proceeding.¹ The Show Cause Order, among other things, directed the Defendants to show cause why their operating authority under Section 214 of the Communications Act of 1934, as amended (“Act”) should not be revoked and why the Defendants should not be ordered to cease and desist from providing interstate common carrier services without prior written application to and consent from the Commission.

Pursuant to the Settlement Agreement, the Defendants agree to surrender for a period of 15 years from the effective date of the Settlement Agreement their license authority under Section 214 of the Act to provide interstate common carrier services. The Settlement Agreement also contemplates that Kurtis J. Kintzel and Keanan Kintzel will refrain from serving, either directly or indirectly, as an attributable principal or as an officer or director in any entity that applies for, or already holds, any FCC license of authorization for the provision of a regulated service for a period of 15 years from the effective date of the Settlement Agreement.

The Settlement Agreement once it is approved by the Presiding Judge, would obviate the need for a protracted hearing, thereby conserving public and private resources. The Settlement Agreement by its terms, provides for a fair and equitable resolution of the captioned proceeding and

¹ Order to Show cause and Notice of Opportunity for Hearing, 22 FCC Rcd 17197 (2007) (“Show Cause Order”).

would be in the public interest. Furthermore, the terms and condition of the Settlement Agreement are such that the concerns raised by *Show Cause Order* will be adequately resolved.


And, the Defendants have sufficiently demonstrated to the Bureau's satisfaction their inability to satisfy forfeitures that might have been imposed had this case went to hearing and resulted in an adverse Initial Decision.

Order

Accordingly, IT IS ORDERED that the executed Settlement Agreement IS ACCEPTED AND APPROVED.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED upon placement of the Settlement Agreement on the Public Record.

FEDERAL COMMUNICATIONS COMMISSION²

A handwritten signature in black ink, reading "Richard L. Sippel". The signature is written in a cursive, flowing style with a large initial "R".

Richard L. Sippel
Chief Administrative Law Judge

² Courtesy copies of this *Order* are being e:mailed to each counsel of record on the date of issuance.

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Kurtis J. Kintzel, Keanan Kintzel, and all)	File No. EB-06-IH-5037
Entities by which they do business before)	
the Federal Communications Commission)	FRN: 0007179054
Resellers of Telecommunications Services		NAL/Acct. No. 200732080029

SETTLEMENT AGREEMENT

The Enforcement Bureau of the Federal Communications Commission ("Bureau") and Kurtis J. Kintzel, Keanan Kintzel, Business Options, Inc., Buzz Telecom Corp. and Avatar Enterprises (collectively, the "Defendants"), by their authorized representatives, hereby enter into this Settlement Agreement for the purpose of resolving and terminating the above-captioned proceeding initiated by an Order to Show Cause and Notice of Opportunity for Hearing ("Order to Show Cause") issued by the Commission on September 10, 2007.¹

I. DEFINITIONS

1. For the purposes of this Settlement Agreement, the following definitions shall apply:
 - (a) "2004 Consent Decree" means the consent decree entered into between the Commission and BOI, Buzz, Avatar, U.S. Bell, Inc. and Link Technologies on or about February 11, 2004 in connection with a proceeding under EB Docket No. 03-85.
 - (b) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (c) "Affiliates" means any entity owned, directed or controlled by Kurtis J. Kintzel and/or Keanan Kintzel, which provides or markets long distance telephone service.
 - (d) "Attributable Principal" means: (1) in the case of a corporation, a party holding 10 percent or more of stock, whether voting or nonvoting, common or preferred; (2) in the case of a limited partnership, a limited partner whose interest is 10 percent or greater (as calculated according to the percentage of equity paid in or the percentage of distribution of profits and losses); (3) in the case of a general partnership, a general partner; and (4) in the case of a limited liability company, a member whose interest is 10 percent or greater.

¹ See *Order to Show Cause and Notice of Opportunity for Hearing*, 22 FCC Rcd 17197 (2007).

- (e) "Avatar" means Avatar Enterprises, any affiliate, d/b/a, predecessor-in-interest, parent company, any wholly or partially owned subsidiary, successor-in-interest or other affiliated companies or businesses, and all directors, officers, employees, shareholders or agents, including consultants and any other persons working for or on behalf of the foregoing.
- (f) "BOI" means Business Options, Inc., any affiliate, d/b/a, predecessor-in-interest, parent company, any wholly or partially owned subsidiary, successor-in-interest or other affiliated companies or businesses, and all directors, officers, employees, shareholders or agents, including consultants and any other persons working for or on behalf of the foregoing.
- (g) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
- (h) "Buzz" means Buzz Telecom Corporation, any affiliate, d/b/a, predecessor-in-interest, parent company, any wholly or partially owned subsidiary, successor-in-interest or other affiliated companies or businesses, and all directors, officers, employees, shareholders or agents, including consultants and any other persons working for or on behalf of the foregoing.
- (i) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
- (j) "Companies" means BOI, Buzz and Avatar, or any one of those entities.
- (k) "Defendants" means Kurtis J. Kintzel, Keanan Kintzel and the Companies.
- (l) "Effective Date" means the date on which the Presiding Officer or the Chief Administrative Law Judge releases the Adopting Order.
- (m) "Final Order" means an order that is no longer subject to administrative or judicial reconsideration, review, appeal or stay.
- (n) The "Individuals" shall mean Kurtis J. Kintzel and Keanan Kintzel.
- (o) "Adopting Order" means the order of the Presiding Officer or the Chief Administrative Law Judge approving the terms of this Settlement Agreement without change, addition, deletion, or modification, and terminating the proceeding in EB Docket No. 07-197.
- (p) "Order to Show Cause" means the Order to Show Cause and Notice of Opportunity for Hearing, 22 FCC Rcd 17197 (2007).
- (q) "Parties" means the Defendants and the Bureau.
- (r) "Presiding Officer" means the Presiding Administrative Law Judge.

- (s) "Proceeding" means the evidentiary hearing initiated by the Order to Show Cause.
- (t) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. On September 10, 2007, the Commission released the Order to Show Cause, initiating an evidentiary hearing to determine whether the Defendants: (1) violated the 2004 Consent Decree by discontinuing service in one or more states without first notifying either the Commission or the appropriate state regulatory authority; (2) violated the 2004 Consent Decree by failing to make required universal service contributions by the date indicated on invoices from USAC; (3) violated the 2004 Consent Decree by failing to make required TRS contributions by the date indicated on invoices received from NECA; (4) violated the 2004 Consent Decree by failing to make required voluntary contributions to the Commission in a timely manner; (5) violated section 63.71 of the Commission's rules² by discontinuing service in one or more states without first notifying either the Commission or the appropriate state regulatory authority; (6) violated section 254 of the Act³ and section 54.706 of the Commission's rules⁴ by failing to make required universal service contributions by the date indicated on invoices from USAC; (7) violated section 225 of the Act⁵ and section 64.604(c)(5)(iii)(A) of the Commission's rules⁶ by failing to make required TRS contributions by the date indicated on invoices received from NECA; (8) violated sections 218 and/or 403 of the Act⁷ by failing to respond fully, completely, and in a timely manner to one or more Commission inquiries; (9) violated section 258 of the Act⁸ and section 64.1120 of the Commission's rules⁹ by changing a subscriber's provider of telephone exchange or telephone toll service without authorizations and/or without following the verification procedures outlined in section 64.1120 of the Commission's rules. The Commission ordered the Defendants to show cause why the Defendants' operating authority under section 214 of the Act¹⁰ should not be revoked and why the Defendants should not be ordered to cease and desist from the provision of any interstate common carrier services without the prior written application to and consent from the Commission. The Bureau was made a party to the Proceeding.

² 47 C.F.R. § 63.71.

³ 47 U.S.C. § 254.

⁴ 47 C.F.R. § 54.706.

⁵ 47 U.S.C. § 225.

⁶ 47 C.F.R. § 64.604(c)(5)(iii)(A).

⁷ 47 U.S.C. § 218, 403.

⁸ 47 U.S.C. § 258.

⁹ 47 C.F.R. § 64.1120.

¹⁰ 47 U.S.C. § 214.

3. On or about November 30, 2006, Defendants ceased providing interstate common carrier services under the authority conferred upon them by Section 214 of the Act.

4. The Parties have reached the instant agreement which would resolve this Proceeding in an efficient and equitable manner. The terms and conditions are set forth as follows:

III. AGREEMENT

5. The Parties agree and acknowledge that this Settlement Agreement shall constitute a final settlement between the Parties to the Proceeding, the Order to Show Cause, and the 2004 Consent Decree. In consideration for the termination of this Proceeding in accordance with the terms of this Settlement Agreement, the Parties agree to the representations, acknowledgements, terms, conditions and procedures contained herein.

6. The Companies admit that they have operated as resellers of interstate telecommunications services and that the FCC has jurisdiction over them and the subject matter of this Proceeding for the purposes of this Settlement Agreement. The Defendants represent and warrant that they are the properly named parties to this Settlement Agreement. The Companies further represent and warrant that they have caused this Settlement Agreement to be executed by their authorized representative, Kurtis J. Kintzel, as a true act and deed, as of the date affixed next to said representative's signature. Kurtis J. Kintzel and the Companies respectively affirm and warrant that Kurtis J. Kintzel is acting in his capacity and within his authority as a corporate officer of the Companies, and on behalf of the Companies, and that by his signature, Kurtis J. Kintzel is binding the Companies to the terms and conditions of this Settlement Agreement. The Defendants, including Kurtis J. Kintzel and Keanan Kintzel, also represent that the Bureau advised them to seek the assistance of counsel of their choice in connection with this Settlement Agreement and they chose not to seek such representation.

7. The Defendants represent that all financial information provided to the Bureau accurately represents the financial status of each of the Defendants. Such financial information demonstrates to the Bureau's satisfaction that the Defendants lack sufficient funds to be able to satisfy any monetary obligations that might be imposed on each or any of them were this proceeding to continue and result in any findings by the Presiding Officer that each or any of the Defendants violated the Commission's rules described in paragraph 2 above. The Bureau enters into this Settlement Agreement in express reliance on the accuracy of the financial information provided to it by the Defendants. The Defendants acknowledge that their representation as to the truth and accuracy of the financial information provided to the Bureau and their representation that this information accurately represents each Defendants' financial status is a material representation. Should the Bureau discover information demonstrating that the Defendants' representations set forth in this paragraph 6 are neither truthful nor accurate, the Defendants acknowledge that this will constitute a material breach of this Settlement Agreement and will render this Settlement Agreement null and void such that the Bureau will be entitled to seek reinstatement of the Proceeding and take such further action as it deems appropriate.

8. The Parties waive their right to a hearing on the issues which are designated in the Order to Show Cause, including all of the usual procedures for preparation and review of an initial decision. The Parties waive their right to judicial reconsideration, review, appeal or stay, or otherwise to challenge or contest the validity of this Settlement Agreement and the Adopting

Order, providing the Presiding Officer issues the Adopting Order without change, addition or modification of this Settlement Agreement.

9. The Parties agree that the Order to Show Cause may be used in construing this Settlement Agreement.

10. The Parties agree that this Settlement Agreement is for settlement purposes only and that signing does not constitute an admission by the Defendants, or the Companies' principals, of any violation of law, rules or policy associated with or arising from their actions or omissions as described in the Order to Show Cause.

11. The Bureau agrees that, in the absence of a material violation of this Agreement or material new evidence relating to issues described in the Order to Show Cause that the Bureau did not obtain through discovery in this Proceeding or is not otherwise currently in the Commission's possession, the Bureau and the Commission will not use the facts developed in this Proceeding, or the existence of this Settlement Agreement, to institute, on its own motion, any new proceedings, formal or informal, or to take any actions on its own motion against the Defendants, or the Companies' principals, concerning the matters that were the subject of the Order to Show Cause.

12. For purposes of settling the matters set forth herein, the Defendants agree to take the actions described below.

- a. On the Effective Date, the Defendants shall surrender the authority conferred upon them by section 214 of the Act to provide interstate common carrier services for a period of fifteen (15) years from the Effective Date, and the Defendants are thus precluded from offering or providing any regulated services subject to Title II of the Act, 47 U.S.C. § 201 *et seq.*, during that period of time as set forth in this paragraph.
- b. The Individuals each agree to refrain from serving, either directly or indirectly, as an Attributable Principal or as an officer or director in any entity that applies for or already holds any FCC license or instrument of authorization for the provision of a regulated service subject to Title II of the Act for a period of fifteen (15) years from the Effective Date.
- c. After fifteen (15) years from the Effective Date, the Individuals and any existing and/or future entities in which either or both, directly or indirectly, are an Attributable Principal or serve as an officer or director, may obtain a section 214 authorization or other FCC license or instrument of authorization for the provision of a regulated service subject to Title II of the Act, if at all, only upon grant of a written application for such. They may not avail themselves of the blanket section 214 authorization provided to domestic common carriers.
- d. The Individuals and any existing and/or future entities in which either or both, directly or indirectly, are an Attributable Principal or serve as an officer or director shall not apply or re-apply for the authorization described in paragraph 11.c above prior to the expiration of the fifteen-year period described in paragraphs 11.a and 11.b above.

- e. The Individuals and any existing and/or future entities in which either or both, directly or indirectly, are an Attributable Principal or serve as an officer or director agree that if, after a period of fifteen (15) years from the Effective Date, they, either individually or together, apply to the Commission for any FCC license or instrument of authorization for the provision of a regulated telecom service subject to Title II, either in an individual capacity or as a principal in an applicant, the applicant shall, in the interest of full disclosure, provide information about the Order to Show Cause and the disposition of the proceeding in EB Docket No. 07-197 in response to any question which inquires whether the applicant or any party thereto has ever had an FCC authorization revoked or been involved in a license revocation proceeding before the FCC. The Individuals and any existing and/or future entities in which either or both, directly or indirectly, are an Attributable Principal or serve as an officer or director, acknowledge that the Commission shall process each such application and evaluate the applicant's basic and other qualifications to be a Commission licensee in the ordinary course.
- f. Avatar will file a final tax return and terminate its existence in its corporate record books and in its state of incorporation.
- g. The Individuals represent that U.S. Bell, Inc. and Link Technologies have previously been dissolved as corporate entities.

13. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate this Proceeding and resolve the Order to Show Cause.

14. The Defendants represent and warrant that the Companies shall not, for the purpose of circumventing any part of this Settlement Agreement, effect any change in their form of doing business or their organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation which engages in acts prohibited in this Settlement Agreement or for any other purpose which would otherwise circumvent any part of this Settlement Agreement or the obligations of this Settlement Agreement. Nothing in the foregoing sentence shall be construed to prohibit the Companies from effecting any change in their form of doing business or their organizational identity, or participating directly or indirectly in any activity to form a separate entity or corporation, where such change does not have the effect of circumventing any part of this Settlement Agreement.

15. The Defendants' and the Bureau's decision to enter into this Settlement Agreement is expressly contingent upon the signing of the Adopting Order by the Presiding Officer and the Adopting Order becoming a Final Order without revision, change, addition, or modification made to its terms.

16. This Settlement Agreement shall resolve any outstanding amounts due by the Defendants as part of the Voluntary Contribution provided for by the 2004 Consent decree.

17. The Parties agree that this Settlement Agreement shall become part of the record of this Proceeding only on its Effective Date.

18. If the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of this Settlement Agreement, the Parties will not contest the

validity of the Settlement Agreement, and the Defendants will waive any statutory right to a trial *de novo*. The Defendants do not waive any statutory right to a trial *de novo* to determine whether they have violated this Settlement Agreement.

19. The Defendants waive any rights they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501, *et seq.*

20. In the event that this Settlement Agreement is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

21. Any material violation of the Settlement Agreement will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order, and such violation shall be considered by the Commission in any future application or other proceeding before the Commission. The Commission agrees that before it takes any formal action in connection with any alleged or suspected violation of this Settlement Agreement, the Defendants or the Companies' Affiliates will be notified of the alleged or suspected violation and be given a reasonable opportunity to respond.

22. The Parties agree that if any provision of the Settlement Agreement conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation (except an order specifically intended to revise the terms of this Settlement Agreement to which the Defendants and the Companies' principals do not consent), that provision will be superseded by such Commission rule or order.

23. By this Settlement Agreement, the Defendants do not waive or alter their right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of the Companies' compliance efforts under this Settlement Agreement, which would otherwise be privileged or confidential, are not altered by the execution or implementation of the terms of the Adopting Order and no waiver of such privileges is made by this Settlement Agreement.

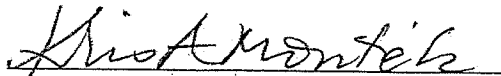
24. The Parties agree that, within ten (10) business days after the date of this Settlement Agreement, they will file with the Presiding Officer a joint motion and draft order requesting that the Presiding Officer sign the draft order, accept this Settlement Agreement, and close the record. The Parties will take such other actions as may be necessary to effectuate the objectives of this Settlement Agreement.

25. The Defendants are jointly and severally liable for the obligations set forth in this Agreement, and any material breach of this Agreement by one of the Defendants will constitute a breach by all Defendants.

26. The Defendants agree that the provisions of this Settlement Agreement shall be binding on their respective successors, assigns, and transferees.

27. This Settlement Agreement may be signed in any number of counterparts (including by facsimile or e-mail), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

For the Enforcement Bureau



Kris Anne Monteith
Chief

7/29/09
Date

Keanan Kintzel, individually

Date

For Business Options, Inc., Buzz Telecom
Corporation and Avatar Enterprises

Kurtis J. Kintzel
Chief Executive Officer

Date

Kurtis J. Kintzel, individually


Date

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For the Enforcement Bureau

Kris Anne Monteith
Chief

Date

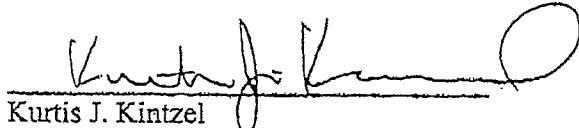


Keenan Kintzel, individually

7.22.2009

Date

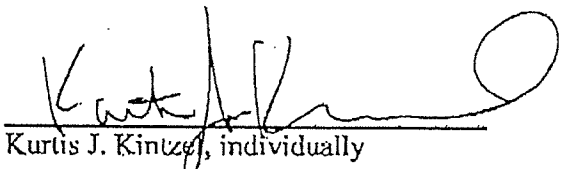
For Business Options, Inc., Buzz Telecom
Corporation and Avatar Enterprises



Kurtis J. Kintzel
Chief Executive Officer

July 26, 2009

Date



Kurtis J. Kintzel, individually

July 26, 2009

Date